STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-666

February 27, 2004

MAINE PUBLIC UTILITIES COMMISSION
Investigation Into MPS'S Stranded Cost Revenue Requirements and Rates

ORDER APPROVING STIPULATION

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

By way of this Order, we approve a Stipulation entered into between Maine Public Service Company (MPS or Company) and the Office of the Public Advocate (OPA) which establishes a stranded cost revenue requirement and stranded cost rates for the Company for the period of March 1, 2004 through December 31, 2006. Under the terms of this Stipulation, the Company's stranded cost rates will stay at current levels on the date that the new revenue requirement goes into effect, March 1, 2004.

II. BACKGROUND

On March 1, 2000, Maine consumers were provided with the opportunity to purchase generation services from the competitive market and, as of that date, the generation portion of electricity service was no longer subject to rate regulation in Maine. As a part of the Restructuring Act, the Commission was required to determine and permit recovery of each utility's stranded costs, defined to be the "legitimate, verifiable and unmitigable costs made unrecoverable as a result of the restructuring of the electric industry …." 35-A M.R.S.A. § 3208.

In *Public Utilities Commission, Investigation of Maine Public Service Company's Stranded Costs, Transmission and Distribution Utility Revenue Requirements and Rate Design,* Docket No. 98-577 (MPS's so-called "megacase"), the Commission established transmission and distribution (T&D) rates for MPS which reflected a 2-year stranded cost revenue requirement. The 2-year period, which expired on February 28, 2002, was chosen to coincide with the period of time for which MPS had sold its non-divested generation asset entitlements pursuant to Chapter 307 of the Commission's Rules. On February 27, 2002, the Commission established a stranded cost revenue requirement for the period through March 1, 2002 through February 29, 2004. Again, the stranded cost rate-setting period coincided with the period of time over which MPS had sold its non-divested generation asset entitlements. *Maine Public Utilities Commission, Investigation of Maine Public Service Company's Stranded Cost Revenue Requirement,* Docket No. 2001-240, Order Approving Stipulation (Feb. 27, 2002).

At the time we set MPS's stranded cost revenue requirement in Docket Nos. 98-577 and 2001-240, the Company's stranded cost revenue requirement was recovered through bundled distribution rates which recovered both distribution delivery and

stranded cost revenue requirements. In *Maine Public Service Company, Request for Approval of Alternative Rate Plan*, Docket No. 2003-85, Order Approving Stipulation at 4. (Sept. 25, 2003), in the course of approving a new distribution revenue requirement for the Company, we unbundled the Company's distribution rates into separate delivery and stranded cost rate components.

On September 16, 2003, the Commission issued a Notice of Investigation initiating this proceeding to determine whether the Company's stranded cost revenue requirements and rates would need to be adjusted effective March 1, 2004 as MPS was scheduled to go out to bid again to sell its QF entitlements for the period beginning March 1, 2004. As we stated in the Notice, it was extremely likely then, that MPS's stranded cost revenue requirement would change effective March 1, 2004 as a result of the new QF entitlement sales price. The Notice of Investigation provided interested persons with an opportunity to intervene in this matter. The Office of the Public Advocate (OPA) filed a timely petition to intervene which was granted without objection. Central Maine Power Company filed a petition for limited intervention for the purpose of receiving all filings and filing a brief on policy issues if appropriate which was also granted.

On October 22, 2003, MPS filed its direct case consisting of the pre-filed testimony of Larry LaPlante/Timothy Brown and Brent Boyles/Laurie Flagg. On December 10, 2003, David Effron filed responsive testimony on behalf of the OPA.

In his testimony, Mr. Effron challenged various aspects of the Company's filing, including, the calculation of interest costs on the Wheelabrator-Sherman QF contract buydown, the Company's forecast that sales will remain flat during the rate-effective period, and the compounding of carrying charges on the deferred fuel account during the most recent stranded cost rate-setting period. In dollar terms, the most significant issue raised by Mr. Effron, on behalf of the OPA, concerned the Company's proposed gross-up of carrying charges for the effect of taxes on the deferred fuel regulatory asset. According to Mr. Effron, the appropriate method of calculating carrying charges on a regulatory asset, such as the deferred fuel account, is to apply the pre-tax rate of return to the net-of-tax asset balance. An alternative, and equivalent, method is to apply the after-tax return to the pre-tax regulatory balance. What the Company proposes to do, according to Mr. Effron, is to use this alternative method and then gross-up the carrying charges, at a later time, for the effect of taxes. According to Mr. Effron, this is inappropriate and, in essence, results in an over-recovery.

Finally, in his testimony, Mr. Effron proposed that the Excess Deferred Income Taxes (EDITs) and the Investment Tax Credits (ITCs) associated with the Company's divested generation assets which were on the Company's books at the time of divestiture and which have not been returned to ratepayers, be flowed back at this time since the IRS has proposed new regulations allowing these items to be flowed-back without violating normalization requirements.

On November 3, 2003, the Commission approved, in Docket No. 2003-667, the sale of the Company's non-divested QF entitlements for the period of March 1, 2004 through December 31, 2006. On December 23, 2003 submitted an updated direct case filing to reflect the result of the recently concluded sale of its QF entitlements.

Following the filing of the Company's updated case, the Company, the OPA, and our Advisory Staff held a number of settlement conferences. On February 19, 2004, MPS and the OPA submitted a Stipulation which, if accepted by the Commission, would resolve all issues in this matter.

III. DESCRIPTION OF THE STIPULATION

The February 19, 2004 Stipulation establishes an annual stranded cost revenue requirement and sets stranded cost rates for the period beginning March 1, 2004 and ending December 31, 2006. The agreed-upon rate-effective period coincides with the period of the Company's recent Chapter 307 sale.

The parties to the Stipulation propose that the stranded cost rates set in Docket No. 2003-85 remain in effect during the rate effective period. The parties further agree that revenue recovery for each year the rate effective period should be based on sales of 543,372 mWh. This level of sales at the current agreed-upon core rates, along with revenues recognized from special rate contracts and discounts, is sufficient to recover a revenue requirement of $11,785,339 which is the agreed upon annual revenue requirement for the rate-effective period. In order to achieve this revenue requirement, the Company will adjust its previously established deferred fuel account for certain amounts due to be paid under its Wheelabrator-Sherman contract and not recovered by its Chapter 307 sale.

As of March 1, 2004, the parties agree that the deferred fuel balance prior to any adjustments is $18,838,000. In order to ensure that MPS is allowed to continue to recognize revenues booked during the period of March 2000 through March 2004, the parties agree that MPS should be allowed to adjust its accumulated deferred income tax account and the deferred fuel balance by $2,896,000, as of March 1, 2004, resulting in a total deferred fuel balance, as of March 1, 2004, of $21,734,000. In exchange for this adjustment, the parties agree that the return component on the deferred fuel balance should be reduced in such a manner that ratepayers are held harmless on a net present value basis as a result of the March 1, 2004 adjustment to the deferred fuel balance. During the rate effective period, the overall pre-tax return component on the deferred fuel balance will be 8.28%, reflecting a 6.17% return on equity.

The Stipulation assumes a certain level of expenses for both Wheelabrator-Sherman and Maine Yankee during the rate effective period. The parties agree that to the extent actual expenses differ from assumed expenses for these items, such differences shall be deferred for future recovery in rates.

Finally, the parties to the Stipulation specifically note that the Stipulation does not address the EDIT and ITC issues raised by the OPA and that the Stipulation does not modify any prior stipulations on this issue. In addition, the absence of any provision in the Stipulation concerning this issue does not prejudice any party concerning the regulatory treatment of such tax benefits in any future proceeding.

IV. DECISION

As we have now stated on numerous occasions, to approve a stipulation the Commission must find that:

1. the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;

1. the process that led to the stipulation was fair to all parties; and

2. the stipulated result is reasonable and not contrary to legislative mandate.

See Central Maine Power Company, Proposed Increase in Rates, Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (Jan. 10, 1995), and *Maine Public Service Company, Proposed Increase in Rates (Rate Design),* Docket No. 95-052, Order (June 26, 1996).

We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. *See Northern Utilities, inc., Proposed Environmental Response Cost Recovery*, Docket No. 96-678, Order Approving Stipulation (April 28, 1997). We find that the proposed Stipulation in this case meets all the above criteria.

The Stipulation before us was entered into between the Company and the OPA. In past cases, we have found that these two entities, often representing opposite views in the ratemaking process, constitute a sufficiently broad spectrum of interests to satisfy the first criterion. *See Public Utilities Commission, Investigation of Stranded Cost Recovery, Transmission and Distribution Utility Revenue Requirements and Rate Design of Bangor Hydro-Electric Company (Phase II),* Docket No. 99-185, Order Approving Stipulation (Maine Public Service Company) at 3 (Aug. 11, 2000). We are, therefore, satisfied that a broad spectrum of interests are represented by the Stipulation.

Based on the record before us, we believe that the process that led to this Stipulation was fair and open. We therefore find that the second criterion for approval has also been satisfied.

Finally, we conclude that the result of the Stipulation is reasonable, not contrary to legislative mandates and consistent with the public interest. The Stipulation resolves the most controversial revenue requirement issue in this case, the carrying charge on

the deferred fuel balance, in a manner which we find to be both reasonable and fair. All other revenue requirement issues are also resolved in a manner which is reasonable and consistent with the public interest. We also find the parties efforts, as reflected in the Stipulation, to maintain level stranded cost rates during the next stranded cost rate-effective period to be reasonable and consistent with the public interest.

Accordingly, it is

O R D E R E D

That the Stipulation entered into between Maine Public Service Company and the Office of the Public Advocate and submitted to us on February 19, 2004 is hereby approved. A copy of the Stipulation is attached hereto[1] and is incorporated by reference.

Dated at Augusta, Maine, this 27th day of February, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus

[1] One of the exhibits attached to the Stipulation contains confidential information. We have included a redacted copy of that exhibit with the Stipulation attached to this Order. The original Stipulation with the confidential exhibit will be kept in the Commission files, subject to terms of the Protective Order.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.